



6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R06-OAR-2005-TX-0002; FRL-9920-34-Region 6]

## Approval and Promulgation of Air Quality Implementation Plans; Texas; Repeal of Lead Emission Rules for Stationary Sources in El Paso and Dallas County

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking direct final action to approve a revision to the State Implementation Plan (SIP) for Texas which repeals lead emission rules which cover stationary sources in El Paso and Dallas county that are no longer in existence. This action is being taken under section 110(k) and part D of the Clean Air Act (CAA).

**DATES:** This rule is effective on **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** without further notice, unless EPA receives relevant adverse comment by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No EPA-R06-OAR-2005-TX-0002, by one of the following methods:

- *www.regulations.gov*. Follow the on-line instructions.
- E-mail: Mr. Kenneth W. Boyce at *boyce.kenneth@epa.gov*.
- Mail or Delivery: Mr. Guy Donaldson, Chief, Air Planning Section (6PD-L),

Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733.

*Instructions:* Direct your comments to Docket ID No. EPA-R06-OAR-2005-TX-0002. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *www.regulations.gov* or e-mail, information that you consider to be CBI or otherwise protected. The *www.regulations.gov* website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special

characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at [www.epa.gov/epahome/dockets.htm](http://www.epa.gov/epahome/dockets.htm).

*Docket:* All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) index and in hard copy at EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available at either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment with the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at 214-665-7253.

**FOR FURTHER INFORMATION CONTACT:** Mr. Kenneth W. Boyce (6PD-L), Air Planning Section, telephone (214) 665-7259, fax (214) 665-6762, e-mail: [boyce.kenneth@epa.gov](mailto:boyce.kenneth@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, "we," "us," and "our" means EPA.

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## **I. Background**

The lead rules contained at 30 Texas Administrative Code Chapter 113 were adopted in 1984 as a result of emissions from a primary lead smelter (ASARCO) located in El Paso County, and two secondary lead smelters (battery recycling facilities) located in Dallas County (RSR and Dixie Metals). Subsequently, the lead processes in all three facilities were shut down and the equipment dismantled. Under its Regulation Reform initiative, the Texas Natural Resource Conservation Commission repealed these lead rules which were adopted to control site specific sources of lead in Dallas and El Paso Counties which are no longer in existence.

## **II. EPA review**

Texas' SIP revision to eliminate the lead rules was deemed complete by operation of law on August 5, 1999. These lead rules were adopted to control emissions from specific sources that are no longer in existence. A review of the emissions inventory for lead sources in Dallas and El Paso Counties confirms that there are no other operational primary or secondary lead smelters located within El Paso or Dallas counties. Therefore, it is no longer necessary for these rules to be included in the Texas SIP. Any new sources of lead in the future will have to demonstrate their operation will not cause violations of the more recent 2008 National Ambient Air Quality standard for lead before receiving a permit to construct. This Standard is much more stringent than the Standard that was in place in 1999. Therefore, as required by section 110(l) of the CAA, these revisions will not interfere with attainment or contribute to nonattainment of any national ambient air quality standard and do not interfere with any other requirement of the CAA. Therefore, EPA is approving these revisions to the Texas SIP.

### **III. Final Action**

In accordance with Section 110(a) and (l) and 40 CFR part 51, EPA is taking direct final action to approve the State of Texas' January 13, 1999 SIP revision submittal which repealed its lead emission rules which applied to operating stationary sources in both El Paso County and Dallas County that are no longer in existence.

EPA is publishing this rule without prior proposal because we view this as a non-controversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the SIP revision if relevant adverse comments are received. This rule will be effective on **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** without further notice unless we receive relevant adverse comment by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. If we receive relevant adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so now. Please note that if we receive relevant adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

### **IV. Statutory and Executive Order Reviews**

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60**

**DAYS AFTER DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER].** Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)



**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Lead.

Dated: November 19, 2014.

**Ron Curry,**  
*Regional Administrator, Region 6.*

40 CFR part 52 is amended as follows:

**PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

**Subpart SS – Texas**

**§ 52.2270 [Amended]**

2. In § 52.2270(c), the table titled “EPA APPROVED REGULATIONS IN THE TEXAS SIP” is amended by removing the centered headings and entries for “Chapter 113 (Reg 3) – Control of Air Pollution From Toxic Materials”.